SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 292

JOHN HENRY BRUNSON, PETITIONER,

vs.

STATE OF NORTH CAROLINA

Nos. 293-296

(RECORDS ARE NOT PRINTED IN THESE CASES—SEE STIPULATION)

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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[fol. 1]

IN SUPREME COURT OF NORTH CAROLINA, ELEVENTH DISTRICT, SPRING TERM, 1947

No. 724

STATE

v.

JOHN HENRY BRUNSON

From Forsyth

Before Rousseau, J., November Term 1946, Forsyth Superior Court—Defendant appealed.

STATEMENT OF CASE ON APPEAL

The defendant was tried on October 30, 1946, under a warrant sworn out in the Municipal Court of the City of Winston-Salem, N. C., charging him with an assault on a female, and found guilty (no jury being provided for in the creation and set-up of said Municipal Court) and defendant appealed to the November Term of the Superior Court of Forsyth County.

Upon the call of this case in the Superior Court the defendant forthwith filed his "Motion To Quash, Etc.", which was heard upon the evidence offered by the defendant and the State, and said Motion was overruled, to which ruling and denial the defendant excepted, as well as to the Court's "Findings of Fact" thereon. His Honor next ordered the trial proceeded with before a jury, on its merits, upon the original warrant issued by the Municipal Court and, upon the evidence offered by the State, the jury returned a verdict of guilty. Judgment was rendered, to which the defendant duly excepted and gave notice of appeal to the Supreme Court, in open Court.

[fol. 2] IN THE MUNICIPAL COURT OF THE CITY OF WINSTON-SALEM

STATE

v.

JOHN HENRY BRUNSON

WARRANT FOR ASSAULT

Christine Davis, being duly sworn, deposes and says that John Henry Brunson on or about the 23rd day of October 1946, at and in the County aforesaid or within the corporate limits of the City of Winston-Salem, did unlawfully and wilfully assault, beat and wound one Christine Davis, a woman, he being a man over 18 years of age, to the great damage of the said Christine Davis, against the statute in such cases made and provided and against the peace and dignity of the State and in violation of Consolidated Statutes, Section —, Chapter —.

Christine Davis, Complainant.

Sworn to and subscribed before me this 23rd day of October 1946. M. L. Ferrell, Clerk, By R. H. Ellison, Deputy Clerk.

STATE OF NORTH CAROLINA:

To the Chief of Police, City of Winston-Salem, or Other Lawful Officer of Forsyth County—Greetings:

For the causes stated in the above affidavit, you are hereby commanded forthwith to arrest John Henry Brunson and him safely keep, so that you have him before the Municipal Court of the City of Winston-Salem, on the 24th day of October 1946, then and there to answer the above complaint, and to be dealt with as the law directs.

Given under my hand and seal this 23rd day of October 1946.

M. L. Ferrell, Clerk Municipal Court, Winston-Salem. By R. H. Ellison, Deputy Clerk. (Seal.)

[fol. 3] IN THE MUNICIPAL COURT OF THE CITY OF WINSTON-SALEM

JUDGMENT

Upon the trial of this case the defendant is: Plea—not guilty—adjudged guilty. Defendant sentenced to 12 months in jail to be assigned to and work under the supervision of the State Highway Commission. Defendant appeals to Nov. 11, 1946 Term Forsyth County Superior Court. Bond $3,000. Committed to jail.

This 30th day of October 1946.

M. L. Ferrell, Clerk.

Endorsed: State v. John Henry Brunson (Colored). Warrant for assault on a woman issued 29th day of October 1946. Summons as witnesses ——. Rec'd 23rd day of October 1946. Exec'd 23rd day of October, 1946. Ex. by Officer H. J. Critz.

Recognizance of defendant on appeal to Muncipal Court in the sum of $50.00 appears in the original transcript.

Recognizance of defendant on appeal to Superior Court in the sum of $3,000 appears in the original transcript.

IN SUPERIOR COURT OF FORSYTH COUNTY

ORGANIZATION OF COURT

Monday, November 11, 1946.

Be it remembered that a Forsyth County Superior Court is begun and being held for the County of Forsyth at the Courthouse in Winston-Salem, N. C., on the 11th day of November 1946, for the trial of criminal cases or civil cases, or both. Honorable J. A. Rousseau, Regular Judge, present and presiding. Honorable J. Earle McMichael, Solicitor for the Eleventh Judicial District, present and [fol. 4] prosecuting the Criminal Docket for this Court. Today being a Legal Holiday (Armistice Day) Court takes a recess until 10 A. M. Tuesday, November 12, 1946.

Tuesday, November 12, 1946.

Court meets pursuant to an order of recess on yesterday. Then comes E. G. Shore, Sheriff of Forsyth County, and in obedience to a venire to him directed by the Board of County Commissioners, returns into Court the following good and lawful persons summoned by him to serve as jurors this the first week of this term of the Court, viz: J. C. Lawrence, W. H. Wright, J. M. White, A. M. Owen, Thos. Tesh, S. L. Furches, Norman H. Kiger, Gurney W. Borender, C. B. McClain, Jack Bodenhamer, P. B. Chumley, E. F. Allgood, W. C. Moore, W. W. Hauser, G. F. Enochs, J. W. Petticord, Sr., J. E. Beamon, James C. Whicker, Jefferson H. Hairston, E. Burton Harpe, Joseph G. Smith, J. P. Crews, J. R. Yokeley, and G. Preston Hege.

For reasons satisfactory to the Court the following good and lawful persons are excused from serving as jurors, this the first week of this term of Court, viz: J. C. Lawrence, W. C. Moore, J. W. Petticord, Sr., J. E. Beamon, Joseph G. Smith, and J. P. Crews.

The following good and lawful persons are summoned to serve as talesmen jurors this the first week of this term of Court, to-wit, viz: N. E. Hartley, J. O. Neal, O. G. Jones, L. C. Creech, F. T. Disher, J. M. Parish, T. J. Reavis, and J. W. Yokeley.

Thursday, November 14, 1946.

The following good and lawful persons are summoned to serve as talesmen jurors, this the first week of this term of Court, viz: R. T. Southard.

[fol. 5] In Superior Court of Forsyth County

Motion to Quash, Etc.—Filed November 14, 1946

To the Honorable J. A. Rousseau, Judge presiding:

The defendant, John Henry Brunson, moves the Court to quash the warrant against him herein and to discharge the petit jury for the following reasons and on the following grounds:

1. That the Grand Jurors sworn, summoned to, and serving at this Criminal Term of the Superior Court of

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Forsyth County, are made up and composed of white people only.

That the Board of County Commissioners of Forsyth County in passing upon and in selecting the names of persons to make up and to constitute the jury list for Forsyth County for the biennial period from about July 1945 to about July 1947, designedly and with the purpose at the time of discriminating against the members of the Negro or colored race, left off of said jury list and purposely refused or purposely declined to place on said jury list, solely because they were Negroes, a tremendously large and overwhelming portion of the Negro tax listers of Forsyth County who were qualified to be selected and placed on said jury list as provided by the laws of North Carolina; that said arbitrary plan and systematic exclusion of eligible jurymen of the Negro race with the pitifully small number of Negro persons whom said Board of County Commissioners put on said jury list, in proportion to the large or total number of white persons whom said Board put on said jury list, which arbitrary plan and systematic exclusion said Board designedly and purposely set up, followed, and carried out, is and was contrary to the law and in plain and in open violation of the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States and of Acts of the United States Congress [fol. 6] and was and is in violation of the rights of this defendant and is an intentional discrimination against members of the Negro race, and that the rights and liberties of this defendant are prejudiced and unlawfully affected thereby. That said plan followed and engaged in of racial exclusion by said Board in wilfully and designedly excluding and declining to place on said jury list a tremendously large and overwhelming number or portion of the Negro tax listers of Forsyth County and of unlawfully and intentionally limiting said members of the Negro race in said plan and set-up followed and engaged in by said Board in selecting said jury list, was, and is, contrary to law, inequitable, and unjust and same has been and is unlawfully affecting and prejudicing the rights and liberties of this defendant, who is a member of the Negro race.

2. That the same plan and set-up for making up and selecting each and all of the other jury lists for Forsyth County has continuously and persistently and consistently been followed, used, and adopted, and carried out for the

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past ten years and longer, and with the same results and effect as the plan and set-up set forth under paragraph 1 hereof, by the Board of County Commissioners of Forsyth County, who served during said period of ten years and longer, and that the same designedly and purposeful plan and agreement, as above set forth and outlined, of discriminating against the members of the Negro or colored race, and of their continual exclusion in making up and in selecting said jury lists for the past ten years and longer, has been carried out.

That on information and belief, no names of Negroes were selected and placed on said jury lists by said Board and no Negroes served on the Grand Jury or the Petit Jury during some of the time of said period of ten years past or longer.

3. That the list of names selected by said Board of [fol. 7] County Commissioners to compose and to constitute the jury list of Forsyth County for the biennial from about July 1945 to about July 1947 has been copied on small scrolls of paper and placed in a box procured for that purpose which jury box, with names now appearing therein as selected, is now being used as the regular jury box for Forsyth County, and from which box the Grand Jury and Petit Jury summoned to this Criminal Term of Court by the Sheriff of Forsyth County are now in attendance upon this Court to serve as said jurors.

That the Petit Jury now in attendance upon this Court was selected by said Board of County Commissioners from said jury box in the manner and to the extent and under said plan and arrangement set forth herein under paragraph 1 of this Motion, and said Petit Jury has been summoned by the Sheriff of this County from said jury list so selected and drawn by said Board of County Commissioners to be summoned and to serve at this Criminal Term of this Court.

That the Grand Jury now in attendance upon this Court was selected by said Board of County Commissioners in the manner and to the extent and under the plan and arrangement set forth herein under paragraph 1 of this Motion, and said Grand Jury has been summoned by the Sheriff of this County from said jury list so selected, and later drawn by said Board of County Commissioners to be summoned and to serve at this Criminal Term of this Court.

That said Petit Jury should be discharged and not allowed to serve as jurors for the reasons and on account of

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the matters and things herein set forth, and the warrant in this case should be quashed.

4. That the plan or system or set-up provided by law for selecting and drawing jurors and in making out, preparing and selecting jury lists in North Carolina as set [fol. 8] forth in Sections 1, 2, and 3, etc., of Chapter 9 of the General Statutes of North Carolina, is discriminatory and contrary to and in plain violation of the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States, in that, among other things, it requires tax-listing and payment of taxes as qualifications for jury service in North Carolina.

5. That Section 11 of Chapter 9 of the General Statutes of North Carolina providing and requiring persons to be freeholders and/or owners of real property in North Carolina in order to be entitled or qualified to serve as talesmen on juries in North Carolina is discriminatory and contrary to and in plain violation of the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States, in that it fixes as a qualification for jury duty, that persons shall have the status of freeholder or shall own real property.

6. That the practice, plan and method pursued by the Board of County Commissioners of Forsyth County in drawing up, selecting and constituting the jury lists for jury service over the past ten years, and longer, and with respect to the present jury panel are otherwise discriminatory and contrary to the Constitution and laws of the United States.

Wherefore, the defendant, John Henry Brunson, prays the Court that said warrant be quashed and that said petit jury panel be discharged.

W. R. Dalton, Counsel for Defendant.

This Nov. 13, 1946.

[fol. 9] *Duly sworn to by John Henry Brunson. Jurat omitted in printing.*

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IN SUPERIOR COURT OF FORSYTH COUNTY

STIPULATION AS TO CERTAIN FACTS

It is agreed by the Solicitor for the State and counsel for the defendant that in order to save unnecessary cost and expense of printing, besides unnecessarily encumbering this record, that it shall not be necessary to copy and put in this record the 51916 names of prospective jurors which appear typewritten and alphabetically arranged on the respective biennial jury lists of Forsyth County for 1935, 1937, 1939, 1941, 1943, and 1945, which were offered in evidence by the defendant in this case; that said names have been counted separately, according to Township, from said jury lists of names biennially prepared, which were listed, arranged, and put up in separate batches or bundles and with the name of the Township and the biennial period written out at the top or (head) on the face (or 1st sheet) of the separate batch or bundle so arranged and with metal clips attached to each separate batch or bundle, thus separating the Township that was so arranged from the other Townships.

That for the biennial period of 1935 there was no such separate list made out for Southfork Township, but there were such separate lists made out for all of the other Townships in the County; that for the biennial period of 1937 there was no such separate list made out for Middlefork Township, but there were such separate lists made out for all of the other Townships in the County; that for the bien-
[fol. 10] nial period of 1939 there was no such separate list made out for Abbott's Creek, Belews Creek, Bethania, Broadbay, Clemmonsville, Kernersville, Lewisville, Middlefork, Old Town, Old Richmond, Salem Chapel, Southfork, and Vienna, Townships, but there was such separate list made out for Winston-Salem; that for the biennial period of 1941 there was no such separate list made out for Abbott's Creek, Belews Creek, Old Town, Old Richmond, Salem Chapel, Southfork, and Vienna Townships, but there was such separate list made out for Bethania, Broadbay, Clemmonsville, Kernersville, Lewisville, Middlefork, and Winston-Salem Townships, and there was also such separate list of Negroes marked "Colored"; that for the biennial period of 1943 there was no such separate list made out for Abbott's Creek, Belews Creek, Bethania, Broadbay, Clem-

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monsville, Kernersville, Lewisville, Middlefork, Old Town, Old Richmond, Salem Chapel, Southfork and Vienna Townships, but there was such separate list made out for Winston-Salem Township; that for the biennial period of 1945 there were such separate lists made out for each and all of the 14 Townships in the County, and there was also such separate list of Negroes marked "Colored".

That the postoffice address or residence address of each person (whose name appears on said jury lists for said biennial years from 1935 to 1945-47, inclusive), was typewritten and entered immediately opposite or immediately underneath each respective name, and there appears on these biennial lists from 1935 to 1945-47 (inclusive) each biennial period, the names of persons (jurors) from every Township in Forsyth County.

That said jury lists, so arranged and indicated, from 1935 to 1945-47 (inclusive) are made up and show the following number of names, according to Townships, of Forsyth County:

	1935	1937	1939	1941	1943	1945
Abbott's Creek	289	191				284
Belews Creek	102	91				103
Bethania	312	186		488		311
Broadbay	540	230		765		539
Clemmonsville	130	71		213		128
Kernersville	341	105		700		340
Lewisville	181	140		445		180
Middlefork	749			2170		767
Old Town	471	243				464
Old Richmond	170	115				156
Salem Chapel	408	69				132
Southfork		297				275
Vienna	73	107				73
W-Salem	7188	3896	7754	3855	7973	6615
Colored				236		255
	10954	5741	7754	8872	7973	10622

[fol. 11] It is Further Stipulated and Agreed that although the above tabulation does not show it, yet in fact there were in the jury lists introduced in evidence, names of persons (jurors) for every Township in Forsyth County for said biennial years.

For the biennial periods of 1939 and 1943, although only Winston-Salem Township is listed, from an examination of the lists introduced in evidence for these two biennial

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periods, the other 13 Townships are represented thereon by names in a ratio as appears in the tabulation for the biennial periods of 1935, 1937, 1941, and 1945.

[fol. 12] In Superior Court of Forsyth County

Defendants' Evidence on Motion to Quash, etc.

Margaret Bell testified: I have lived in Winston-Salem all of my life. I work for the Winston-Salem Chamber of Commerce. The last United States census for Forsyth County was for 1940, and showed a population of 126,475 persons of which approximately 45% are colored and 55% are white. There has been no census taken since that time for Forsyth County but an unofficial estimate of the population made by the Winston-Salem Chamber of Commerce for 1946 is 150,000 persons, of which 45% is colored. It is one of the functions of the Winston-Salem Chamber of Commerce to investigate matters of census and population. I have been engaged in this particular work. I have been employed by the Winston-Salem Chamber of Commerce since February of 1946.

The figures which I have testified to have been taken from the records of the Winston-Salem Chamber of Commerce and is information given out to the public generally as reliable and official records of the Chamber's office.

Virgil W. Joyce testified: I have lived in Winston-Salem about 25 years and am County Tax Supervisor for Forsyth County and have been since 1938. My duties consist of listing, assessing and billing in connection with tax assessment in Forsyth County. All persons, white and colored, who own property in the County or who reside in Forsyth County are expected to list through my office the taxes which they are required to pay under the law. January of each year is the usual or regular tax listing period. My office receives the returns of all property owners during the month of January each year, and at any time during the year if they have not listed their taxes. The records of my office show all of the townships of Forsyth County for tax listing purposes. There are approximately 50,000 tax tickets

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[fol. 13] for the current year 1946, for Forsyth County of which there are approximately 43,000 taxpayers and 32,500 of these are white and 4,000 colored. Each year we have to garnishee their payrolls and we have a pick-up list of approximately 3,000 colored from the garnishment of payrolls and approximately 1,000 white pick-up payroll list; and approximately 2,500 firms and corporations, churches, organizations, and so forth. That makes a total of 43,000 and that balance there of 7,000 is just a rough estimate of additional properties owned by the taxpayers, shown as separate tax tickets.

These 7,000 are included in the 50,000 estimation, and consists of people who own two or more different pieces of property at different locations in the city or in the county, and under our tax listing set-up, we require them to list separately for those different pieces of property. We make out a ticket for each piece of property and if a person owns six or seven different pieces of property, he would be listed on our tax books six or seven different times. The tax listings include real estate, personal property and all other properties and they also include a listing of poll taxes.

Cross-examination:

My approximation is 32,500 whites and about 4,000 colored. The 3,000 colored garnishees is nothing but just poll taxes and is picked up from payroll lists. These pick-ups occur where garnishees do not list their taxes. We actually have on our tax list about 32,500 tax listers.

Redirect examination:

We also have 1,000 white delinquents that are picked up. These are people who through error or oversight or maybe intentionally, kept their names off our tax records and we in checking up, found them and put them on. The same thing applied to the colored. And the delinquents, colored, embrace real property and personal property. The 3,000 delinquents, colored, were made up of persons who are re-
[fol. 14] quired to pay poll tax and the 1,000 delinquents, white, were made up of those required to pay poll tax only.

Walter A. Mickle testified: I have lived in Forsyth County all my life. I am the County-City Tax Collector.

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I collect all taxes for Forsyth County including Winston-Salem. I have been in this office since July 1, 1946. 97% of the total taxes levied were collected for the year 1945. The earned discounts and releases that affect the levy reduced it to about 1-28/100 of a per cent not collected for 1945. This, mathematically, would figure from 98-½ to 98-¾ per cent collected.

This includes those levied on delinquents and everybody else, including the 3,000 which represents the estimate which the witness, Mr. Joyce, testified to of delinquents among the colored and also the 1,000 delinquents among the white and would also include all the other properties for the different people, including firms and corporations and everybody else.

Cross-examination:

Before I went in as Tax Collector, I was Deputy or Chief Deputy under Sheriff Shore from December 1936, and as Chief Deputy it was part of my duties to handle the jury list and apportion the jurors to the various deputies and see that the jurors drawn were summoned.

I also assisted in the actual drawing of the jury and the preparation of the list until July 1946. I also assisted every odd two years in helping the Clerk of the Board of Commissioners in preparing the jury scrolls that made up the jury list, by checking for dead, and people moved out of the county and other things. I would think that there are a proportionate amount of colored names in the box to the white, according to the tax scrolls of the County. I do not know of any colored man whose name has been drawn since the [fol. 15] nine years I have been there, that was not summoned if he could be found. We have had quite a number in the last five years on the Grand Juries. I know of Artie Cash, Charlie Jeffries and a colored janitor at Frank Stith's and others. It is a fact that there are jurors, Negroes, on Petit Juries, both criminal and civil, that served. At the drawing of these juries, there has never been any juries drawn since I was connected with it, where there was not a child of less than 10 years of age there at the drawing of the jury lists.

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Redirect examination:

I was never Clerk to the Board of County Commissioners. I never did serve the Board of County Commissioners. I have been present, representing the Sheriff's office, in the matter of drawing the jury by the Board of County Commissioners from December 1936, until June 1946. I did not take part in the deliberations of the Board of County Commissioners but was merely representing the Sheriff when he could not be there.

I don't know the names of the five colored men that were summoned for service on the Grand Jury in the last five years but I remember that we had this year one colored man, Charlie Peebles, who I believe served the first six months of this year. During the past five years, beside Peebles, this Cash boy that the Solicitor mentioned and there are others whose names I don't recall right now.

On the petit jury I don't recall anybody but I do know that Negroes have served but I don't recall their names. I don't know what names went into the jury box. I don't know the total number that went in there either. I had nothing to do with preparing the names that went into the jury box.

In connection with Mr. McMichael's question about my helping the Register of Deeds check these lists, I interpreted [fol. 16] his question to mean that the jury list contained a proportionate number of both races. I had nothing to do with putting the names into the jury box. I don't know what became of the names. They were in the custody of the Register of Deeds and I have no further knowledge after that. The list that the Register of Deeds had were taxpayers prepared by townships, typewritten sheets of the names of the taxpayers of the various townships of the county. I never prepared any lists or I never prepared those lists. I presume that these were tax lists but I don't know because I didn't prepare them. The list that I saw was the list furnished or handed to me by the Register of Deeds. The list I saw had a proportionate number of both races of taxpayers, I should think. I presume they were taxpayers. I don't know what proportion of the taxpayers was of colored and white.

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Recross-examination:

I never heard any Commissioner discuss whether a man was black or white, that I remember, during the time I was in the office as Chief Deputy, at the drawing of the jury.

Redirect examination:

I was not present at all the meetings of the Board of County Commissioners. I was only there when the jury was drawn. I don't know what discussion was had before I entered the room or after I left the room.

At this point, counsel for the defendant pointed out to the Court that they wished to produce Mr. Lentz, Clerk to the Board of County Commissioners and Register of Deeds, but that it was impossible for him to come up the stairs to the Courtroom because of a serious heart condition that he has.

The Solicitor stated that Mr. Lentz is the man who prepared the scrolls under the direction of the County Com- [fol. 17] missioners. The Solicitor indicated that he would not object to the introduction of the jury list records of the Board of County Commissioners.

Gene Pratt testified: I live in Forsyth County and have been a resident of this county most of my life. I was a candidate for the State Legislature, in the last primary campaign. I went downstairs with Messrs. W. R. Dalton and I. Duke Avnet, defendant's counsel, to talk to Mr. J. H. Lentz, the Register of Deeds and the Clerk to the Board of County Commissioners with regard to the jury lists here in Forsyth County, the day before yesterday. Mr. Lentz brought out and produced to me and to Messrs. Dalton and Avnet, attorneys, what he said were the jury lists typewritten for 1935, 1937, 1939, 1941, 1943 and 1945. These typewritten records were put on the table in his office in front of me for my examination by Mr. Lentz. The names on the list were arranged alphabetically.

For 1941 there was produced by Mr. Lentz for our inspection and in our presence a separate list of jurors of the jury list which was marked "colored" at the top. He stated that that was the state of the records of his office. For the year 1945 I examined the records produced there by Mr. Lentz and the jury list had a separate list marked "col-

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ored." I counted the total number of names on those typewritten sheets for white and colored for 1941. There was a total of 8,598 white names and 236 colored names, giving a grand total of 8,834 of both white and colored.

I counted every name on the 1945 jury list of both white and colored and the total of those names for whites was 10,367 and the total for colored 255, making a grand total of 10,622 for both white and colored.

I examined the typewritten pages of jury lists for each of the other years, namely, 1935, 1937, 1939 and 1943, [fol. 18] and found that the total for each of these respective years would not vary more than 150 or 200 from the grand total of 10,622 for the year 1945.

I have been in and out of the Forsyth County Superior Court about as much as the average person who did not have a case or was not an attorney and I have never yet seen a colored person sitting in the jury box. I do not know whether they were stood aside by lawyers or not. I do not know whether they were summoned here and begged to be excused or not for some good reason.

I am Business Agent for United Tobacco Workers, Local 22 and have been in that position since May 1945. Before that I was employed at Brown and Williamson Tobacco Company for 12½ years.

Cross-examination:

I know of Phil Jeffries, a colored man, in Winston-Salem. I don't say he didn't serve on the jury this year (1945). I don't say that Charlie Peebles did not serve on the Grand Jury for six months. I do not know how many times I have been to court in the last four years. I think I have been in court considerably more than six times in the last four years. I don't know the exact number of times.

On the jury lists that I saw in the Register of Deeds' office, I did see on that list "colored" at the head of it. I am not certain whether the jury lists which I saw were the original lists or a copy thereof. There was nothing opposite each individual name on the jury list to show whether it was white or colored. The word "colored" appeared only at the head of the paper. Mr. Lentz said that he had assistance in making up the original tax lists or scrolls for jury service and that he got people out of townships and tax listers in the various precincts to check for the purpose of

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checking off those who were dead or who had moved out of the county and those who were mentally incompetent. [fol. 19] Mr. Lentz told me also that when he made up the scrolls he cut them and made them up on typewritten lists, cut them with scissors and put them in the basket and presented them to the Board of Commissioners on the first Monday in July on the odd years and at that time they were put in the box. Mr. Lentz has been Register of Deeds as long as I can remember. Mr. Lentz did not say anything about a child under 10 years of age being used to draw the names for the jury list. I did not ask whether a child was used. I can't say whether the names on the colored lists for 1941 and 1945 were alphabetically arranged. There was a clip around them in the files separating them from the other names. They were very definitely separated from the other lists.

At this point, counsel for defendant requested that the jury list records be brought up promptly to the Court for the Court's inspection. The Court granted this request and ordered the lists to be brought up to the Courtroom, from the year 1935 on up to the present.

Ernie G. Shore testified: I am Sheriff of Forsyth County; have been since 1936. At this present term of the Superior Court of Forsyth County, there were no colored people summoned, there were none drawn or summoned for service on either the petit or Grand Jury.

During the period that I have served as Sheriff for Forsyth County, all of the colored persons that have been drawn from the jury lists, drawn out of the jury box, for service on the Grand Juries and on the petit juries, under the set-up of the County Board of Commissioners, have been summoned by me or through my office that have been found. There haven't been very many colored persons [fol. 20] summoned. I would say perhaps a dozen in all colored persons have been summoned from December 7, 1936, when I took office as Sheriff for Forsyth County up until the present time.

Cross-examination:

The figure of a dozen colored persons is my best estimate. We have had over five colored persons on the Grand Juries

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alone, not counting the petit juries. We had several on a six months Grand Jury. Mr. Jeffries didn't serve on the Grand Jury. He was in that panel. Charlie Peebles served on the Grand Jury and as far as I know every man that has ever been drawn that could be found by my department has been summoned.

My deputies and I helped Mr. Lentz in culling these lists and preparing them. We assist in removing from the list lawyers, policemen, officers, National Guardsmen and Firemen, Postal Employees and Railroad Employees. I have no idea as to the number of women making up the 40,000 tax listers in the County. I know that a good percentage of the tax listers are women. I should think that a good percent of the cards are minors, with the Wachovia Bank as guardian for them.

Redirect examination:

I don't know the percentage as to the women taxpayers or tax listers. I knew there were lots of them. I did not say the percentage was very small. I said I did not have any idea as to the percentage. I did not say the guardians were small in number.

Recross-examination:

I was present on a good many occasions when the jury lists were drawn by the Commissioners. On every occasion that I was present, they had a child under 10 there to draw the list. The Board of Commissioners requested me to have a child there under 10 years old at each drawing. My Chief Deputy, Mr. Mickle, and I saw to that on each occasion. I never heard any statement made by any Com-
[fol. 21] missioner, or inquiry made, as to whether a man drawn was white or black.

Redirect examination:

I was not present at all of the deliberations of the Board. I was only present when the jury list was drawn unless I had something to take up before the Board. That is the only time that I was present. I saw them put in the names that went into the jury list for the purpose of serving as jurors, on practically every occasion since I have been Sheriff. I

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saw them put the names in the box. I have been present practically every time. I mean for each two year period.

Upon motion by counsel for the defendants, the records of the Board of County Commissioners containing copies of the jury lists for the years 1935, 1937, 1939, 1941, 1943, and 1945 respectively, were admitted into evidence.

Gene Pratt (recalled) testified: (Upon being shown a paper writing by counsel for the defendant marked "colored" at the top, said paper writing having been taken from the 1941 jury list of the Board of County Commissioners which was in evidence):

I see what appears to be carbon marks, marks of carbon paper on this sheet. By the type I can't tell whether or not it is a carbon record. The paper is part of the 1941 group of records that Mr. Lentz, the Clerk to the Board turned over to me the day before yesterday to examine and to count the names thereon. Mr. Lentz told me that the jury lists that made up his records which he showed me, represented and were a copy of all the names that went into the jury box to be drawn as jurors in this county.

(Upon being shown a paper by counsel for the defendant marked "colored" at the top, which paper contained a list of names, typewritten):

[fol. 22] That paper is the list of the record turned over to me by the Register of Deeds for examination and for counting the names thereon, in the office of the Register of Deeds the day before yesterday. I counted the names on that list and they totaled 255, I think.

(Upon having his attention directed by counsel for the defendant to the clip which clip was holding together the papers containing the names at the head of which appeared the word "colored"): That clip was attached to those papers and it separated the "colored" list from the other names in the list that the Clerk to the Board of Commissioners turned over to me.

Virgil W. Joyce (recalled) testified: My estimate based upon some information and the records of my office of the

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percentage of the total number of tax listers of Forsyth County who are women is approximately 10%.

Cross-examination:

About 3 to 5% are non-residents who are listed in the County and for whom I have cards in my records. About 5 to 10% represent the guardians that are listed in my records for minors.

Redirect examination:

About 5 to 10% of the total number of tax listers, roughly speaking, represents guardians and guardian accounts. My estimate is based on my contact with the tax tickets and the tax books over a period of years.

At this point it was Stipulated between the Solicitor for the State and the counsel for the defendant, that the records of the Board of County Commissioners previously admitted into evidence are the copies of the original jury lists handed to the Commissioners, the names on which original lists [fol. 23] were put in the jury box as constituting the jury lists for these respective biennial periods, namely, from 1935 up through 1945-47.

William E. Church testified: I am Clerk of the Superior Court for Forsyth County, and have been since December 1, 1930. The day before yesterday afternoon, Mr. Dalton, one of the counsel for the defendant, requested me to go into the records of my office, the minutes of this Court's proceedings, and with the aid of my assistants and clerks, to determine and add up the number of jurors who have been summoned here out of the jury lists of this county for service on the Grand Juries and the petit juries in Forsyth County. The period to be covered was from October 1, 1936, up through this term of Court this year. I have not been able to complete that record but I have done some work on it. We started from October 1, 1936, and have prepared the record up through July 11, 1938.

We have the number of the jurors on the memorandum list in my hands that were excused on the opening day of the different terms of court that I have covered in my record. If some juror was excused after the opening day my record wouldn't include it. This year there are 11 regular Crimi-

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nal Terms of the Superior Court of Forsyth County and there are 9 regularly called Civil Terms. There are 20 terms for the present year (1946) which would carry us to January of 1947. From now until January 1, 1947, there will be three terms of Court, leaving 17 terms of Court that have already been held this year including this present term.

The Grand Jury under our set-up now serves for a period of 6 months, namely, from January 1st to July 1st. The Grand Jury is composed of 18 men. The practice of having a Grand Jury to serve 6 months has been in existence since July 1, 1937, by virtue of a law that was passed in 1937, [fol. 24] namely, Chapter 206, Public Local Laws of 1937. Since July 1937, 42 jurors have been drawn for the first week of the Criminal Court in January and July of each year, respectively, from which panel of 42 jurors is selected a panel of 18 members to serve as a Grand Jury for the 6 months period. The other weeks, 30 jurors are drawn, that is, the second week of all other terms. There are 30 jurors drawn for each week of each criminal term.

The lists and records of my office show so many names summoned by the Sheriff and turned into my office. Dating from July 1936, and up until the present time, the number of jurors excused after going into court would vary. During the war it would be different from the ordinary times. During some terms 4 were excused, sometimes 5 and different numbers. However, I would not think it would run so very high, that is, the number of excused at the opening of court.

For the last couple of years, there has been a small number of excuses and a small percentage summoned. It would depend on which Judge is presiding and the nature of the excuses has a lot to do with it. At the first week of each January and July Term of Criminal Court commencing with July 1, 1937, there were 42 jurors drawn. I can't tell how many were summoned out of the 42 drawn. We get our Grand Jury and the rest served on the regular (petit) jury. They were drawn but my records do not show who served on the Grand Jury. I can't state whether of those who were drawn from the box and summoned that an overwhelming number of those appeared in court for service here on the jury.

During the war we had a lot of trouble with jurors because there were thousands of people out of Forsyth County

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on defense jobs, in Norfolk, in Tennessee, and in the Army and Navy and Washington and other places. What the percentage would be I couldn't guess. Since the war the num- [fol. 25] ber summoned from the number drawn has increased. The percentage has not been 100 but we have been getting people back to the county practically ever since the war was over and they are still coming back. I do not know how many were summoned on the jury for these terms.

For the period from October 12, 1936, through July 11, 1938, my records show that there were 1,012 jurors summoned, of which number 113 were excused from jury service. There were 18 drawn for every Grand Jury that was drawn. I think that the figures I have just given for the period October 12, 1936, to July 11, 1938, would be fairly representative of the numbers summoned and excused for the period between July 11, 1938, to about January 1, 1942.

From the time of the War, about January 1, 1942, and through the War period, these figures mentioned would not be representative; in some terms of court during the War period, we didn't have over half of the number of jurors who were drawn and summoned. I would say that these conditions during the war period prevailed up until about the Fall of 1945 and the Spring of 1946. Since the Spring of 1946, and up until now, I would say that the figures which I previously gave for the period 1936 to 1938 would be fairly representative.

Cross-examination:

During the year 1946, and up until the Spring thereof, the 1936-1938 figures would not be a near approximation because not only on the weeks in which we held court do we get hardly 50% of the jurors drawn and summoned, but over half the time in the said period of 1946, only one week's term of court was held whereas two weeks had been scheduled and often there were but three or four days of civil court held out of a three week term. From 1942, and up until the Spring of 1946, there wouldn't average two courts a year that would hold a second week of the Criminal Term for that period. So the 1936-1938 figures which I gave [fol. 26] would not be any kind of approximation for the last 5 years that jurors were summoned and drawn. I could not begin to estimate the figures for this war period.

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I did not assist the Register of Deeds in the preparation of the jury lists but I did assist in checking them—that is, I would check them before they were run and cut and after they were typed and before they were put in the box. The records as to mental incompetence are kept in my office, that is, those that are officially adjudicated mental incompetents. In addition to that, I have knowledge of hundreds of other people in the county who would not make good jurymen but who have not been officially adjudicated incompetent.

My opinion as to the number of guardian accounts which I have in my office is between six and seven hundred which are being handled by other persons other than myself. I would say that I handle around four hundred to four hundred and fifty guardian accounts.

John D. Slawter testified: I live in Winston-Salem; have been a resident here for 35 years or more. I have been practicing law 31 years. During the course of my law practice in the last 20 or 30 years, I have had occasion to engage in the trial of civil and criminal cases here in the Superior Court of Forsyth County. My practice is such that I am frequently here engaged in the trial of court or in attendance upon court, and this has been true over the entire period of my practice. In being in and out and around the courthouse I have noticed the juries on different occasions here. I would not know as to how many colored people were summoned here in this court for service on the Grand Juries or on the petit juries. I know that there have been colored jurors who have served on the Grand Jury and on the petit juries. I would not estimate the number because I don't know. It [fol. 27] would be purely a guess on my part. I think there were more than 4 or 5 colored persons who had served on the Grand Jury and Petit Jury in the past 10 years. I would not say whether there were as many as 10 because that would be purely a guess on my part. I don't recall that I remember the name of any colored persons who served on the Grand or Petit juries in the past 10 years except Charlie Peebles who served on the Grand Jury here for six months. I don't remember the names of any of the other colored jurors.

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At this point, the Solicitor for the State admitted that no Negroes served on the Grand Jury in the year 1946, up to and including this term of Court.

I don't recall any other colored person serving on the Grand Jury or Petit Juries during 1945, excepting Charlie Peebles. I don't recall any colored person who served for the year 1946 on either the Grand Jury or Petit Juries. I don't recall how many colored persons served on the Grand Jury and Petit Jury in the year 1945. I don't know and have no opinion as to how many served in 1944 or in 1943.

Cross-examination:

Upon my recollection being refreshed I do remember Phil Jeffries serving on one of the juries this Spring. He may have served a whole week. I have appeared as counsel for a great many colored people. I would not pretend to say there have not been more than 5 Negroes who have served on the juries in the last 10 years.

Ernie G. Shore (recalled by the State) testified: The criminal jury for the next term of this court has a name of [fol. 28] a Negro drawn. I don't know whether he has been summoned. I noticed one on the list but I don't know whether he has been found or not.

Cross-examination:

The drawing of the names for the next term of this Court occurred on the first Monday in this month (October 1946).

Walter A. Mickle (recalled) testified: I think Mr. Virgil W. Joyce testified that on the tax list for the biennial period 1945-47 there were 3,000 colored delinquents and 1,000 white delinquents and it was explained that it is a pick-up list of taxpayers obtained from the payrolls of various corporations of the county. We start to pick up these names early in the year. We ask the corporations for a list of their employees and later in the year, some time in June or about the first part of July, we ask them to revise their lists of employees in order to get rid of those that may have been there earlier, and were not there at that time. We pick out

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those names every year and this applies to both white and colored.

The names thus picked up are of those people who are garnisheed for their taxes and this year it was completed about the first of September. We garnisheed all those names furnished us as of approximately July 1st. We proceed to collect from these persons as soon as the corporations are in a position to turn over the money to us. The collections this year were completed by September 1st. This date is fairly later than the date when collections are usually completed. I am not familiar with the former years having not been tax collector for previous years. I have been tax collector since July 1, 1946. I would say we collected taxes from about 50% of the colored and white delinquents. These are all made up of pick-ups. There is a distinction between the delinquents and pick-ups, the people [fol. 29] who list but do not pay the taxes listed are called delinquents. Those who fail to list taxes are considered pick-ups. With respect to the pick-ups, we exhaust every effort to collect taxes from them. It is only a poll tax that is charged to them and after we have gotten all of them we think we can possibly get, the tax supervisor then releases the balance of them and they are no longer heard of. It is the practice each year to collect the taxes from persons who fail to list their taxes in the year when the delinquency is discovered.

Cross-examination:

It is an annual proposition that most of these delinquents have to be picked up every year. It will run approximately about 3,000 colored and 1,000 whites each year.

Gene Pratt (recalled) testified: I have here a list which I think is complete and which shows alphabetically arranged the names of all of the townships in Forsyth County. They are: Abbotts Creek, Belews Creek, Bethania, Broadbay, Clemmonsville, Kernersville, Lewisville, Middle Fork, Old Town, Old Richmond, Salem Chapel, South Fork, Vienna, Winston-Salem. This includes all of the townships in Forsyth County. Fourteen in all. This is all. I checked some of the biennial jury lists which are in evidence to ascertain if those lists contained the names of jurors from any

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and all of the townships, in Forsyth County. As to the 1945 biennial jury list, there appeared the names of jurors from each township in the county. As to the 1943 biennial jury list, the names of the jurors appearing on the list are from only one township, namely, Winston. As to the 1941 biennal jury list, no names appeared thereon from the following townships: Abbotts Creek, Belews Creek, Old Town, Old Richmond, Salem Chapel, South Fork, Vienna Township. As to the 1939 biennial jury list, the names of the [fol. 30] jurors appearing on the list are from only one township, namely, Winston. As to the 1937 biennial jury list, there appeared the names of jurors from each township in the county with the exception of Middle Fork. As to the 1935 biennial jury list, all townships are represented on the jury list.

Cross-examination.

I looked through the township lists and followed alphabetically through it, that is, through the end of the list where the name of the township appears, and so I assumed that the townships that were not there, weren't there. The township appears on the jury list by name and if I remember correctly it was 236 names of colored persons that appeared on the biennial jury list for 1941. That was all that I saw on a separate list that I counted for 1941. I was referring only to the list marked "colored" in giving this figure for 1941.

I can't tell whether about half or two-fifths of the list for 1941 represents Winston Township. A considerable portion of it represents Winston Township. I do not say that the names on the other papers exclusive of those papers in the 1941 list marked "colored" are not colored persons. There is nothing on any list at all except that list headed "colored" persons that will designate a white man from a colored man.

Re-direct examination:

I was present when counsel for the defendant, Mr. Avnet and Mr. Dalton, approached Mr. Lentz, Clerk to the Board of County Commissioners, and asked him to produce the entire record list of juries that had been drawn by the Board of Commissioners for Forsyth County, for which records he was the custodian as Clerk to the Board. These papers

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in evidence contain all of the records that Mr. Lentz turned over to us there. The Clerk stated to us that this list marked "colored" for the 1945 biennial jury list, was a list of all the colored jurors whose names appeared in the box, according to his list and he stated the same thing as to the biennial jury list for 1941.

[fol. 31] CHRISTOPHER C. KELLUM testified: I live in Winston-Salem, and have resided here all of my life. I am in the insurance business. During the last 10 years and longer, while a resident of Winston-Salem, I have had occasion to be thrown with the colored people in a business and social way and other ways. I do come around the courts and see the juries in the box, like those gentlemen sitting there now. On the petit jury I have not seen any colored persons. I remember Artie Cash, Peebles and Phil Jeffries serving on the Grand Jury. I do not recall any I have ever seen or heard of serving on the petit juries.

Cross-examination:

Those names which I have mentioned are all that I know about. I don't know about Jeffries serving on the Petit Jury in this court in February 1946.

STATE'S EVIDENCE ON MOTION TO QUASH, *etc.*

JAMES G. HANES testified: I am Chairman of the County Board of Commissioners of Forsyth County and have been since 1928. In July of 1945, under the Statute, the Commissioners had the Clerk of the Board prepare and lay a scroll before them of the citizens and taxpayers of Forsyth County for the purpose of making up the jury list. To the best of our ability we checked the list and with the Clerk's help and the other people like Mr. Mickle and others, to find out who were dead and who had moved out of the county and who were people of good moral character.

After preparing that scroll we had that placed in the box according to the law and before doing that I had the old names removed from the box. No questions were asked concerning whites and blacks. The lists were prepared and made up from the tax list record. That list was originally prepared from the actual tax cards in Mr. Virgil [fol. 32] Joyce's office. They were turned over to Mr. Lentz

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and he was instructed to make the list from them. We have down here an IBM system where each taxpayer has a card and the original scroll that was turned over to Mr. Lentz was the running of every card that Mr. Joyce has in his office, and that was turned over. In the drawing of these lists, at no time did I or any other member of the Board ever discuss the qualifications of a juror as to whether he was white or colored. I do not know when I come to them whether they are white or colored unless I personally know the person. There is no red or black ink on any of them. They are all on black, I think.

I do not have any independent knowledge as to the proportion of the white and colored in the box. All I know is that they are in there according to the proportion as they were on the tax list. We have a child under 10 who picks one out of the box and hands it to the Clerk. There is usually one of the Deputy Sheriffs or the Sheriff there, some man that he asks to act for him—who hands it to the first Commissioner. There are three of us at the table. After the first Commissioner inspects it he hands it to the second Commissioner, and after the second Commissioner inspects it, he hands it to the third Commissioner, and after he inspects it he hands it to the stenographer, who writes the names.

If any Commissioner knows that name is dead or has left the county or has been convicted of a felony, then I destroy that scroll. Otherwise the name goes on the list and every jury that I have ever attended was drawn in open session, the doors open, and people walk in and out constantly. There are a number of lawyers in town who have from time to time been present when we were drawing jurors. So if there had been any discussion as to who was to go in the box, as to the color, it would have been a matter of public record. There is usually, too, a newspaper reporter present when we are drawing it.

[fol. 33] Cross-examination:

Every two years the Board of Commissioners makes up a separate new and distinct jury list, for service on the Grand Juries and Petit Juries here in Forsyth County. At the first meeting we ask the tax man, tax lister, tax collector to bring in all the tax cards in Forsyth County. He brings them in, presents them to the County Commissioners. We

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look through those. We couldn't, of course, inspect every name of 50,000 names. We look through them, ask questions, whether they were all there and all in proper order, and we turn them over to the Register of Deeds and ask him to make a complete copy. We do not make out a list from those. We turn them over to the Register of Deeds. We turn the cards over to the Register of Deeds, the complete cards that are handed to us by the tax collector. We turn all of these cards over to the Register of Deeds prepared from the tax books and which are handed to us from the tax collector's office.

We do not examine each one of these cards individually. We do the best we can. We leaf through them, and ask questions. We may take a bunch from one township, and another from another township. We have no special way to take that bunch. They are not divided as to corporation or individuals or anything. They are brought to us in a bunch. They are not brought to us in a bunch from a certain township but they are all brought in together for the county of Forsyth. The tax collector would bring to us all of the individual cards for tax listing purposes of a particular township.

I do not run through them. We examine them superficially. We could not examine 50,000 cards. We might pick up some cards and leaf through them and then we might not. We might not look at some of the cards at all. Some of them we don't look at. We take the word of the tax man, and the tax collector, that all the cards are there. That's [fol. 34] our instructions to him, to present all of them to us. We might pick up some cards and leaf through them without asking questions. We might look at some cards and might not. Some of the Commissioners, I presume—I don't remember—some of them, I don't guess, look at any of them. It would be impossible for us to look through 50,000 cards and we take the word of the tax man that he brought all the cards to us. We turn all the cards over, without any questions at all, to the Register of Deeds, with instructions to put all those names on his list that he puts into the jury box.

I have been referring to the tax lister's office. I relied exclusively then on all the cards that we turned in or presented to our Board by the tax lister's office. We did not check through his office or their records, if any, as to

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whether all those cards were there covering the taxpayers of Forsyth County. We take his word for that. The tax man would know better than I, what the total, approximate total number of tax listers in Forsyth County is now. I have a pretty good general knowledge of that myself.

So when we were making up this list back in 1945, the present one under which we are now operating, it was our opinion then that there were around 43,000 taxpayers, tax listers, in this county. We had approximately 43,000 cards for the present jury list set-up for the biennial period of July 1945, to July 1947, to turn into the Register of Deeds for preparing a list to go into the jury box. I turned in all that were turned in to us. He said 43,000 taxpayers on the witness stand in this trial. I don't know what percent of the total population of Forsyth County are colored people. That's not my business to keep up with that. I don't know what percent is white. I see the proportions printed from time to time. I heard Margaret Bell testify to it this morning, in this hearing. We keep no record as to those rejected.

[fol. 35] I'd say there are not a great number of them that are rejected. I don't recall a great number. Unless we know some reason why a person should not serve on a jury, we pass them for jury duty. I should think that element or phase or fact, so far as moral character is concerned, was very, very small in percentage. As to intelligence, the percentage rejected would be extremely small. I don't recall anyone except when someone knows a man is mentally incapacitated and that would be almost never. The names on the jury list were never separated, their names went into the box as they were given to us by the tax collector and no question was asked as to which—in fact, you couldn't separate them.

As far as I know, Mr. Lentz has never reported to us any separate list for colored persons of 236 for 1941. They are all brought in and put in the box together. I have no information about a separate colored list of 255 names prepared in the biennial jury list of 1945. I have never asked Mr. Lentz to separate anything. I have turned them over to him with instructions to put them in the jury box. I would not know about two separate lists made up of white and colored. When they were brought in to us they were all in one basket, and we put all of them in the box. That is

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all I know. I didn't have anything to do with preparing the list.

I did not say that for the 1941 biennial jury list there were 8,834 names only put in the box. I said I did not know how many names were in the box at any year. No question was asked. I will not say that 8,834 out of 40,000 taxpayers in this county represents an unreasonably, unusually low number of names to go in the jury box. I have said it time and again that our Board did not select the names. They are turned over to Mr. Lentz and it is his duty to make up the list and present them to us. We do not at any time select the names to go into the jury box.

[fol. 36] I said that when Mr. Lentz brought in the names, no questions were asked as to who was in there. I don't know whether it is a fair representation or not to have for the biennial jury period commencing 1941, 8,834 names (both white and colored) and for the present year 1945, 10,622 of which number 10,367 are whites and 255 colored as compared with the total number of taxpayers in this county for each of these respective biennial periods. I have never examined it as to that. I guess it is a fair proportionate representation of names to go in the jury box of Forsyth County, from which juries, Grand Jury and Petit Juries, would be selected.

There is one Negro juror, viz: Jefferson H. Hairston, whose name was drawn out of the regular county jury box and who was summoned by the Sheriff for service on the Petit Jury at this term and who is now serving.

At this point, counsel for the State and the defendant argued the motion before the Court.

Ruling on Motion to Quash

Ruling of the Court: Motion to Quash, etc., denied. Exception by all defendants.

Exception No. 1

The Court: "Well, sir, Gentlemen, I am denying your motion. I am certainly not going to hold that my State law is unconstitutional in passing upon the eligibility of jurors

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and I find that there has not been a discrimination. This Grand Jury does not have to find a bill in this case."

(The following Findings of Fact were announced by the Court after the verdict was returned by the Jury and after sentence was imposed):

[fol. 37] In Superior Court of Forsyth County

Findings of Fact

The Court: "After hearing the evidence, both for the defendant and the State, upon the motion to quash the panel, etc., in the above entitled cause, the Court finds as a fact:

That the Commissioners of Forsyth County did prepare a list of scrolls for prospective jurors and placed said list in the jury box and that there was a fair representation of Negroes on said list and placed in said jury box; that there was no discrimination in the selection of the jury in regard to color or religion.

The Court further finds as a fact that the defendants are indicted upon a warrant and that the question of the selection of a Grand Jury is not germane in this Motion. The Court is of the opinion that the Commissioners of Forsyth County were careless in their preparation of scrolls but finds as a fact that when the scrolls were drawn from the box that they were scrutinized and passed on individually by the several Commissioners.

The Court further finds as a fact that the Commissioners have always ordered the Clerk of the Board to prepare a list of scrolls for prospective jurors from the complete and entire tax list, except for those names deleted by law."

The defendants except to the foregoing Findings of Fact.

Exception No. 2

[fol. 38] In Superior Court of Forsyth County

Plea of Not Guilty

The defendant comes into open court and through his counsel, W. R. Dalton and Chas. H. Livengood, enters a

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plea of not guilty. Whereupon the following good and lawful persons are sworn and impaneled to try the issues of travers joined, to-wit: F. T. Disher, W. H. Wright, A. M. Owen, Thos. Tesh, W. W. Hauser, Norman H. Kiger, Gurney W. Borender, C. B. McClain, Jack Bodenhamer, P. B. Chumley, J. R. Yokeley, and James C. Whicker, and for their

VERDICT—FIND THE DEFENDANT GUILTY

IN SUPERIOR COURT OF FORSYTH COUNTY

JUDGMENT

It is the judgment of the Court that he, John Henry Brunson, be confined in the common jail of Forsyth County for fifteen months and be assigned work on the roads under the supervision of the State Highway & Public Works Commission.

To the judgment rendered the defendant excepts and gives notice of appeal to the Supreme Court in open Court.

Exception No. 3

IN SUPERIOR COURT OF FORSYTH COUNTY

APPEAL ENTRIES

Upon the coming in of the verdict the defendant made a motion for a new trial on the grounds of errors committed during the progress of the trial. Motion overruled and defendant excepts. Notice of appeal given by the defendant in open Court.

Exception No. 4

Upon the rendition of judgment the defendant excepts and gives notice of appeal to the Supreme Court in open court. Notice of appeal waived. Appeal bond in the sum of $100.00 is adjudged sufficient. Appearance bond in the sum of $1,000 is adjudged sufficient. The defendant is allowed 75 days to make up and serve case on appeal and the State is allowed 40 days thereafter to serve countercase or file exceptions. This November 15, 1946.

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[fol. 39] Recognizance of Defendant dated November 15, 1946, in the sum of $1,000 appears in the original transcript of appeal.

Appeal Bond for costs in the sum of $100.00 appears in the original transcript of appeal.

IN SUPERIOR COURT OF FORSYTH COUNTY

ASSIGNMENTS OF ERROR

The defendant hereby assigns and groups his assignments of error as follows:

1. That His Honor erred in denying defendant's "Motion to Quash, etc." on the grounds and for the reasons set out in said "Motion To Quash, etc." (R. pp. 5-9).

Exception No. 1 (R. p. 36)

2. That His Honor erred in making and finding his "Findings of Fact" (R. p. 37) on the grounds and for the reasons that said "Findings of Fact" are not in accordance with and are not supported by the evidence adduced thereon at this hearing; that said "Findings of Fact" run counter to and are in plain violation of the due process and equal protection Clauses of the 14th Amendment to the Constitution of the United States and also run counter to and in plain violation of the provisions of United States Code Annotated, Title 8, Section 44, and other provisions of the United States Code or Statute Laws. That there is no evidence to support said "Findings of Fact."

Exception No. 2 (R. p. 37)

3. That His Honor erred in rendering Judgment against the defendant ordering him confined in the common jail of Forsyth County and to be assigned work on the roads, etc.

Exception No. 3 (R. p. 38)

4. That His Honor erred in overruling (denying) defendant's Motion for a new trial on the grounds of errors com-
[fol. 40] mitted during the progress of the trial, which mo-

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tion was lodged upon the coming in of the verdict of the jury.

Exception No. 4 (R. p. 38)

The foregoing constitutes the appellant (defendant's) Statement of Case on Appeal in the case of State v. John Henry Brunson, and is made out and submitted, this January 27, 1947, by:

W. R. Dalton, Attorney for Appellant (Defendant).

STATE OF NORTH CAROLINA,
Forsyth County:

I hereby accept service of the foregoing appellant's (defendant) Statement of Case on Appeal in the case of State v. John Henry Brunson, and I acknowledge receipt of a copy of said Statement of Case on Appeal.

Walter E. Johnston, Jr., Solicitor of the 11th Judicial District of North Carolina.

Jan. 27, 1947.

AGREEMENT AS TO CASE ON APPEAL

The foregoing case is agreed to and it is to be and constitute the case on appeal and the transcript of the record in the Supreme Court.

This April 12, 1947.

J. Erle McMichael, Solicitor, and Walter E. Johnston, Jr., Solicitor (beginning January 1, 1947).

W. R. Dalton and I. Duke Avnet, Attorneys for Defendant.

(Transcript certified by clerk superior court.)

[fol. 41] SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1947

No. 724

STATE

v.

JOHN HENRY BRUNSON

Appeal by Defendant from Rousseau, J., November Term, 1946, of Forsyth

Criminal prosecution on warrant charging the defendant, a man over eighteen years of age, with assault upon a female, tried originally in the Municipal Court of the City of Winston-Salem and again *de novo* on appeal to the Superior Court of Forsyth County.

Verdict: Guilty.
Judgment: Fifteen months on the roads.
The defendant appeals, assigning errors.

Attorney-General McMullen and Assistant Attorneys-General Bruton, Rhodes and Moody for the State.
William Reid Dalton for defendant.

Per CURIAM:

The exceptions relied on here are the same as those presented in the case of S. v. Koritz, et al., No. 723, herewith decided, and are controlled by the rulings in that case.

No Error.

A true copy.

Adrian J. Newton, Clerk of the Supreme Court of North Carolina. (Seal.)

[fol. 42] [Endorsed:] No. 724. Thursday, May 29, 1947. State v. Brunson. Per Curiam. No Error. Filed Jun. 5, 1947. In the Office of Clerk, Supreme Court of North Carolina.

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[fol. 43] JUDGMENT

SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1947

No. 724. Forsyth County

STATE

VS.

JOHN HENRY BRUNSON

This cause came on to be argued upon the transcript of the record from the Superior Court Forsyth County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, be certified to the said Superior Court, to the intent that proceedings be had therein in said cause according to law as declared in said opinion. And it is considered and adjudged further, that the Defendant do pay the costs of the appeal in this Court incurred, to wit, the sum of Twenty-two and 50/100 dollars ($22.50), and execution issue therefor.

A True Copy.

Adrian J. Newton, Clerk of the Supreme Court.
(Seal.)

[fol. 44] IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA, SPRING TERM, 1947

No. 724. Forsyth County

STATE

V.

JOHN HENRY BRUNSON

Appeal Docketed, 14 April, 1947.
Case Argued, 21 May, 1947.
Opinion Filed, 5 June, 1947.
Final Judgment Entered, 5 June, 1947.
Opinion Certified to the Superior Court of Forsyth County, 12 June, 1947.

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true

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and perfect copy of the record and proceedings in the above entitled case as the same now appear from the originals on file in my office.

I further certify that the rules of this Court prohibit filing of petitions to rehear in criminal actions.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this the 23rd day of July, 1947.

Adrian J. Newton, Clerk of the Supreme Court of the State of North Carolina. (Seal.)

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[fol. 45] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 292

JOHN HENRY BRUNSON, Petitioner,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 46] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 293

ESSIE KING, Petitioner,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 47] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 294

MARTHA JONES, Petitioner,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 48] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 295

LOUISE JAMES (Alias Moore), and EVELYN CHILDS, Petitioners,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 49] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 296

LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, et al., Petitioners,

vs.

STATE OF NORTH CAROLINA

ORDER ALLOWING CERTIORARI—Filed December 15, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 50] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1947

No. 292

JOHN HENRY BRUNSON, (Petitioner),

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 293

ESSIE KING, (Petitioner),

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 294

MARTHA JONES, (Petitioner),

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 295

LOUISE JAMES (Alias Moore), and EVELYN CHILDS,
(Petitioners)

vs.

STATE OF NORTH CAROLINA, (Respondent)

No. 296

LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD
STURDIVANT, LOUVENIA WALLACE, (Petitioners),

vs.

STATE OF NORTH CAROLINA, (Respondent)

STIPULATION AS TO RECORDS—Filed December 20, 1947

Since it is a fact that in all five of these cases, namely, Nos. 292, 293, 294, 295, and 296, the Motions to Quash, all of the evidence offered, the Findings of Fact, the Exceptions taken, and the Assignments of Error entered, are

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identically the same and raise and present the same questions of law, it is stipulated and agreed that it is not essential or necessary to a consideration of these cases that five separate and distinct Records be printed but that one Record only, namely that in No. 292, "John Henry Brunson vs. State of North Carolina" shall be printed and that this Record in No. 292 may be used and considered by the Court in hearing and passing upon the other cases, Nos. 293, 294, 295, and 296.

It is further stipulated that all five of the above numbered cases may be treated and considered and briefed in one Brief.

Wm. Reid Dalton, Nathan Witt, Attorneys for Petitioners. Harry McMullen, Attorney General of North Carolina, Counsel for Respondent.

[fol. 51] [File endorsement omitted.]

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